

**REMARKS**

After amendment, claims 1-4, 6-42, 47-48 and 55-61 and 63 remain pending in the present application, claim 62 is canceled and claims 5, 43-46 and 49-54 were previously cancelled. The amendment to the claims is made consistent with Applicant's view of allowable subject matter posited in light of his attached declaration. Claim 1 has been amended to reflect the claim scope to which Applicants' believe they are entitled. Claim 5, previously canceled, has been reintroduced as new claim 63. Claim 62 has been canceled. No other amendment has been made to the instant application to place the application in condition for allowance. No new matter has been added to the application by way of the present amendment.

The Examiner has rejected the previously pending claims (except for claims 6-7 which the Examiner has indicated are allowable if rewritten in independent claim form) under 35 U.S.C. §103(a) for the reasons stated in the October, 2009 office action. Applicant shall address the rejections in the section which follows.

**The 35 USC § 103 Rejection**

The Examiner has rejected previously pending claims 1-4, 6-42, and 47-48 under 35 U.S.C. § 103 variously over "A survey on the composition of mineral water and identification of natural mineral water" ("Luk") in view Someya, U.S. patent no. 4,540,584 ("Someya"), Tuffley, international patent publication WO02/00043 ("Tuffley"), Lindon, U.S. Patent no. 4,325,975, Mehansho, et al., U.S. patent no. 7,090,878 (Mehansho) and Dyrr, et al., international patent publication WO 01/52672 ("Dyrr"), for the reasons which are stated in the March 9, 2009 office action on pages 2-5. Separately, the Examiner has rejected previously pending claims 55-62 under 35 U.S.C. §103 variously over the above-referenced publications as applied to claims 1-4 and 8-52, further in view of Jakubowiz, DE Publication 19700368 ("Jakubowiz") for the reasons which are set forth in the March 9, 2009 office action on page 5.

As presented in the following paragraphs, Applicants respectfully submit that the presently claimed invention is non-obvious and patentable over the teachings of the cited references. In the first instance, the prior art does not teach or suggest the present invention. Secondly, the attached declaration of inventor Ian David Kaehne, provides further documentary evidence which shows unequivocally that the teachings of the prior art references do not render the present invention unpatentable and the Examiner's arguments that the present invention represents a mere optimization of the teachings of the prior art are simply not cogent enough to maintain the rejection of the present invention as set forth in the amended claims. The sum and substance of Applicants' arguments regarding the prior art from his response of July, 2009 are referenced here. It is quite clear that the prior art does not disclose or suggest the present invention, as further evidenced by the attached declaration of the inventor.

As further evidence of patentability, Applicants address each of the Examiner's points which are presented in the October, 2009 office action on pages 7-9. Applicants comments address each point hereinbelow.

In claim 1, Applicant has amended the ranges of the group B elements to reflect the originally claimed ranges, in line with the data shown in the attached Declaration of inventor Ian David Kaehne, enclosed. Claim 1 also recites that the mineral water is "substantially free of a flavor or sweetener compound."

Accordingly, Applicant submits the following remarks in response to Examiner Pratt's response on pages 7 through 9 of the instant Office Action.

The remarks are numbered to the paragraph of the response.

(1a) The Examiner states that "The declaration contains information as to a taste test using five samples for testing using the claimed minerals in particular amounts. Applicant tasted the samples and arrived at the best tasting beverage. However, as above, it would have been obvious

to use particular amounts of the first 8 minerals as this amounts to using more or less of each mineral."

Applicant responds to the Examiner's argument by pointing out that the selection of the five samples is only made possible by *ex post facto* analysis to manufacture samples that are predicted to have the characteristics as taught by the present invention. It was not the point of the second Paulett declaration to show how the invention was arrived at, but rather principally to emulate the amount of phosphorus referred to in Someya because the Examiner had earlier objected that phosphorus did not impact on taste. The Paulett declaration showed that the level of phosphorous (as taught by Someya) resulted in an unpleasant beverage and thus demonstrated that at relevant amounts it did in fact impact on taste.

(1b) "The trace minerals are not used in amounts that would have affected the taste of the beverage"

The first Paulett declaration shows a difference in the taste adding groups C and D. What the inventor finds is that whilst a great improvement is had in providing minerals of groups A and B, the addition of minerals of groups C and D do provides a more rounded flavour providing an extra mineral balance to lift the flavour of the beverage.

In contrast to the Examiner's contention, it is simply not the case that the levels of C and D minerals are present such that they have no impact on flavour. Indeed, increasing the concentrations beyond the claimed range results in unbalanced water with "too strong" initial mouthfeel, saltiness and mineral sensation as shown for samples 32 and 33 of the declaration of the inventor (see attached Declaration of Ian David Kaehne).

(3a) "Applicant argues that the taste qualities of mineral water can be influenced by the mineral concentration of the water and that this is unexpected and that the art does not suggest such. This is exactly what a recipe does, uses various amounts of ingredients knowing how they taste to

make an acceptable product."

Applicants respectfully submit that the Examiner is relying on a certain misconception in arguing that the present invention is unpatentable. Applicants' submission is that a recipe utilizes known ingredients with known impact on flavour. In the case of minerals by and large these are known to individually impart off flavours. It is not the case that these are individually added to improve the flavour of a composition. That the inventor is able to vary the concentration of such minerals is unexpected.

(3b) "The cited references are more to making a beverage for health purposes, but that does not mean that one can not lower the amounts of ingredients to make a palatable product."

Applicant concurs with the Examiner's statement that the cited art is more for making a health beverage than for taste. Applicant's submission is that it is wholly unexpected that one can add a complement of minerals to provide a beverage that is an enhancement over the flavour of water. Minerals are added to enhance flavour, not as the Examiner suggests that they are reduced from a health benefit perspective so that one can drink the beverage without having to endure a poor tasting composition. The present invention is not one of minimizing an adverse impact either by reducing the amounts added or attempting to mask the flavour with a sweetener or flavouring compound, rather it is to add only minerals with a view that they will enhance the flavour. This approach to providing a tasty beverage is submitted is wholly unexpected and has led to a new composition, with a range of compositions that have not been published in any prior art shown or known by the applicant. This is evidenced by the compilation of prior art cited against the present invention.

(4) Applicant concurs with the Examiner's view that Tuffley and Mehansho are medicinal drinks. The mineral compositions are different, and can thus be distinguished from the present claims. There is no suggestion in Tuffley and Mehansho that a complement of minerals can be used to enhance flavour. They teach a means of masking poor taste. Amended claims now further recite that the drink excludes sweeteners and flavouring compounds, thus obviated any teachings of

that art.

(5) Applicant agrees that a recipe is obvious if the ingredients are used for their known purposes. It is applicant's position, as stated above, that in the present invention the ingredients, i.e. the minerals, are by and large known to impart undesirable taste characteristics. Nevertheless, the minerals with known undesirable taste characteristics are combined to produce a beverage with a taste that is superior to plain water. That, it is submitted is *unexpected*, and consequently, non-obvious. If the Examiner's contention is that all one needs to do is make the minerals dilute enough not to impact flavour, then there wouldn't be any point in adding any minerals, one would simply exclude them. Moreover, with adding minerals, however dilute, it would not be expected that there would be any improvement in taste.

(6) The classification system was essential in constructing the manufactured mineral water given that the impact of most of the minerals on the taste of the composition was unknown. This impact is contingent on the concentration of the minerals being generally around the range defined in claim 1. The taste characteristics are quite different where only single elements are tested, by and large single elemental compositions are not palatable, and in no way improve taste over pure water.

(7) Original testing was performed with several individual people as tasters. Whilst clearly there are some differences in preference for taste, these do not vary all that much. Where individual elements are taken outside of the ranges claimed tasters of the manufactured drink by and large agree. This type of taste panel is well known and used in food and beverage, including the judging of wines, baked products and the like. In the case of using phosphorus at levels taught by Someya, we note that the comment by Mr Paulett that the beverage of Sample # 5 was "dreadful tasting". The statement is unequivocal and extreme and is reflective of the impact phosphorous has on taste at the levels taught by Someya. The inventor in his declaration submitted herewith also confirms the poor taste characteristics of sample # 5. The prospect of a panel of tasters coming to a conclusion that the same sample was acceptable is negligible. We

also note that Mr Paulett is not the applicant or the inventor of the present invention.

(8a) The Examiner states in relation to sample #5 and the Someya reference. that "... other amounts of ingredients are used, which could have offset the taste of this amount of phosphorous". The inventor has undertaken a very large number of tests using a very large range of elemental concentrations, and in the inventors experience it would not be possible to offset such a strong taste aberration by adjustment of other minerals to provide a manufactured mineral water with an acceptable taste. It is the inventor's experience that the ranges defined in the present claims are the only ranges of concentration that provide for an acceptably tasting mineral water.

(8b) Applicant concurs that it is known that phosphorous has been used in beverages - particularly as phosphoric acid. However applicant submits, and has demonstrated by means of data present in the specification and in statutory declaration form that the concentration of minerals is paramount in achieving an appropriate taste outcome. Applicant's claims are accordingly so limited. The mere presence or absence of one or more minerals is not sufficient to provide the taste outcome, attention also needs to be had to the amounts of all of the minerals that are present. The Examiner seems also to have agreed with that proposition in stating that adverse taste can be minimized by the simple step of having lower concentrations of minerals.

(9) The Examiner states that "... in the combined references the taste of minerals is known." Applicant agrees, however applicant's submission is that the prior art teaches that by and large the taste of minerals is considered bad.

"using a tiny amount which would actually not impact on the taste would have been obvious". As set forth above, applicant has demonstrated that the small amounts of minerals defined for the group C and D elements impact significantly on taste, notwithstanding the Examiner's belief that they would not.

"As to the larger amounts, the taste of a mineral is determined by just trying it, and then mixing other tasty minerals together, . ." Applicant points out that by and large minerals are not

considered "tasty" particularly as individual minerals these are considered to confer an "off taste" to water. Most, if not all of the minerals defined in the claims are not taught as being "tasty" by the prior art. The prior art also does not teach what impact combining two or more (e.g. seven) elements have on taste. Thus the present invention provides for a manufactured mineral water where the taste is improved over and above water. This is not what the prior art states.

### *The Deficiencies of the Prior Art*

The deficiencies of the prior art in failing to render the present invention obvious have been detailed at great length in previously filed papers and those summations and arguments are referenced here in addressing the Examiner's rejection, further in light of the evidence posited by the attached declaration of inventor Ian David Kaehne.

In contrast to the prior art teachings, the present invention teaches that a balance of elements that may typically on their own be poor tasting can result in a desirable tasting beverage (mixture). None of the citations show this balancing, or motivate this approach, because of the complete failure of the prior art to even recognize the present invention. In contrast to the present invention, each of the prior art citations uses a completely different factor (i.e., other than element balancing), to achieve the result of a taste masking or off-taste neutralising agent. It is thus not demonstrated, nor is it shown to be part of the knowledge of the skilled artisan, to balance off two or more elements (let alone seven elements) to achieve a taste balance. There is simply no recognition or motivation from the cited art to provide the present invention as claimed. It is respectfully submitted that the invention provides an unexpected result over the prior art and consequently, the present invention is clearly patentable.

Applicant respectfully submits that there is no disclosure or suggestion in the prior art cited of the composition as claimed in the instant claims. Moreover, there is no disclosure of a multi-elemental mineral water with defined levels of the multiple (at least seven) elements to cooperatively balance the taste components of each of the elements such that an acceptable, even

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superior tasting drinking water is achieved in an unexpected fashion.

For all of the above reasons, it is respectfully submitted that the present application is now in condition for allowance and such action is earnestly solicited. One claim (claim 62) has been cancelled and one claim has been added. No fee is therefore due for the presentation of this amendment. A petition for a three month extension of time and a notice of appeal are enclosed as is the appropriate fee. Small entity status continues to apply to the present application.

The Commissioner is authorized to charge any fee or credit any overpayment to deposit account 04-0838.

Respectfully submitted,  
COLEMAN SUDOL SAPONE, P.C.

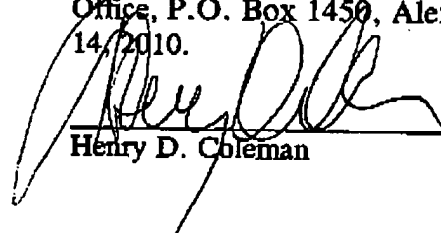
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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being sent to Examiner Helen F. Pratt in group art unit 1794 of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450, on April 14, 2010.

  
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